CANADIAN LEGAL HISTORY

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VOLUME TWO

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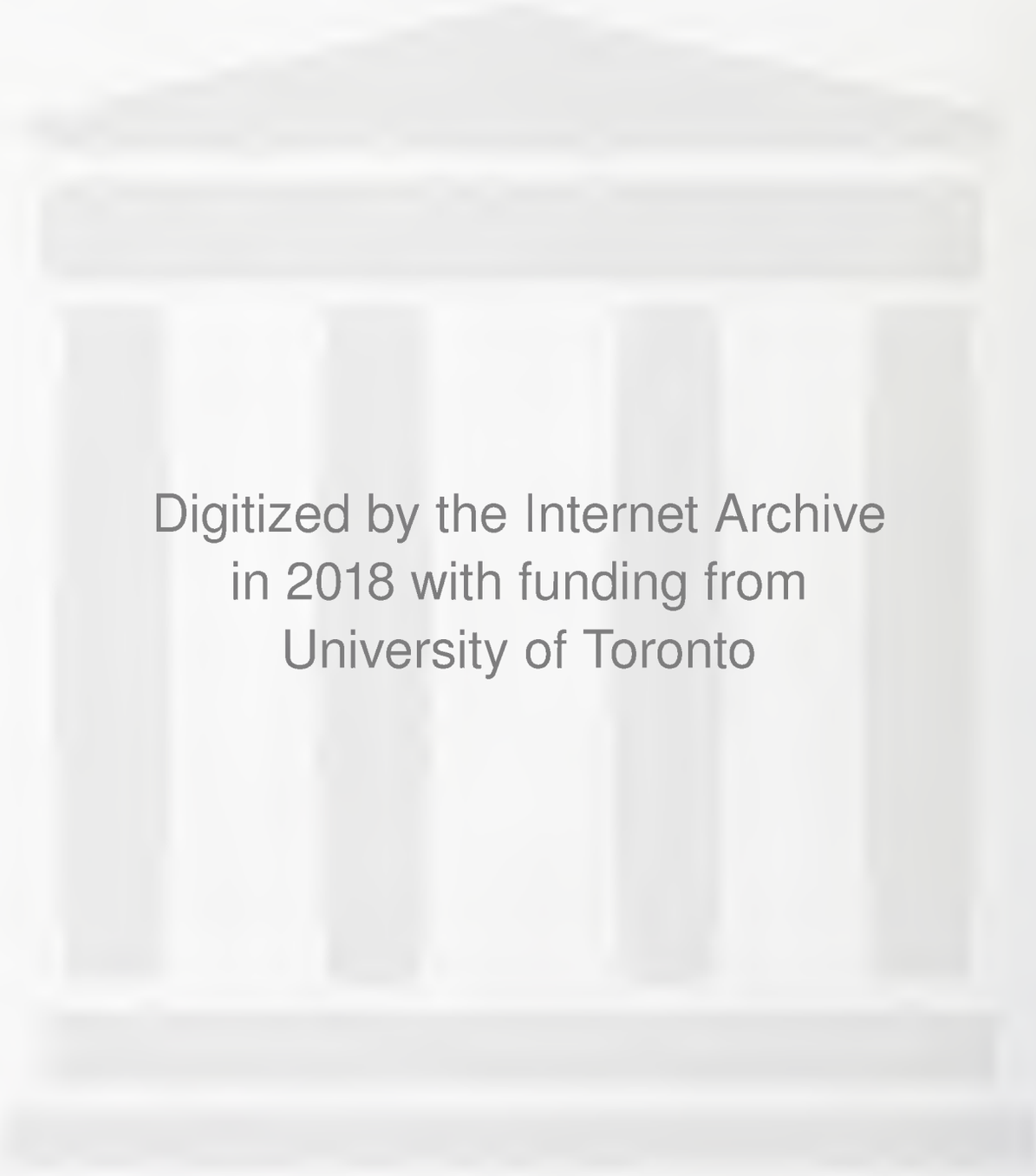

Excerpts from a Debate about a Bill to Permit Mill-Owners to Flood Land and Pay Damages
The [Toronto] Globe (27 April 1859)

MacDonald opposed the bill, as permitting undue interference with the rights of private individuals. It allowed persons to build mills by the margins of streams and to flood their neighbours' lands on giving them such compensation as might be awarded, no matter how inadequate it might be.

Mowat said that this was not any new legislation. The principle had been adopted in the United States and great advantages had been found to flow from it. At a parcel of land to the height of one inch, the owner of the mill could obtain an injunction in Chancery restraining the mill owner from working his mill. Nothing could be more just than that a party should be allowed to work a mill on giving proper compensation to those whose land was injured by any flooding that might result therefrom. He was satisfied that the bill was desired by the people of Upper Canada and its penage would be hailed on a great boom.

Gould said that there are many large mills now standing still in the consequence of the obstinacy of parties holding small patches of land which they refused to sell at even ten times their value. He could not conceive of any injustice arising from the erection of mills, on the payment of proper compensation for any damages which might result therefrom.

Sherwood said that the bill established a dangerous principle--the principle that one man might take another's property without the consent of the owner on giving him such a sum therefore as his neighbours might award.

MacDonald apprehended serious evils would result from the giving of power to individuals to erect mills where they pleased. Before the rights of individuals were taken away it ought to be shown that there was a public necessity for mills in the locality where it was proposed to erect them. Ferres said that if a man did not desire to part with his property he should not be compelled to do so for the benefit of another private individual. To take away land in order that a great public improvement might be made--such as the building of a railway or a canal--was a very different thing.

Cameron said that the difficulty under which his gentlemen appeared to labour in reference to this bill arose from the fact that they viewed the matter as between two private individuals. He was of the opinion that mills were as important to the country as railways or any other work.

[The bill was rejected, 44-38.]

WORKERS' COMPENSATION: THE STRANGE CASE OF THE FELLOW SERVANT RULE

NOTE: The first look at workers' compensation is about the common law in the nineteenth century, and especially the notorious fellow servant rule. The easiest way to understand it is to imagine an injured worker, and wonder what sorts of claims for compensation he or she might have. There was little prospect for compensation except as damages from a successful lawsuit - assuming that the worker had the knowledge, resources, and nerve to sue anyone. Whom he or she could sue and what sorts of claims he or she might have? If we ignore the possibility that a stranger caused the injury, the most likely candidates to be defendants were the employer and another worker. The other worker might well have been at fault, but was highly unlikely to have enough money to bother suing.

So, what sorts of claims might be made against the employer? The prospect of having an express contract for safe working conditions or compensation was small indeed. If the employer had caused the injury through negligence or some other established tort (and we can ignore the fact that negligence was only slowly appearing as a discrete tort during this period), the claim was straightforward. However, the employer might well not have participated personally at all in the activities of the business, and lack of participation was less likely as business organizations grew larger, and delegation became more common. As these trends continued, the injury was more and more likely to have been caused by another worker - if anyone at all had been at fault. So, what claims might lawyers have made?

One possibility might have been based on a general rule of tort liability that was well-established by the beginning of the century: vicarious liability. The general principle was that an employer was liable for the torts of an employees committed within the scope of the employment. Therefore, we might imagine a worker making a claim in this way: I was injured by another worker (that is, someone employed by the my employer - who came to be known as the "fellow-servant"); the injury was caused in a way that makes that worker liable to me (say, by negligence); I do not want to sue that worker; however, according to the general rules of vicarious liability, the employer is liable to me because the employer

is liable for the torts of the other worker (the "fellow servant"). This explanation is put in terms of a possibility, because it never got off the ground; it was (in retrospect, at least) squelched by Priestly v.Fowler.

This case is tough to read. The plaintiff was employed by the defendant, and injured when a cart on which he was riding collapsed. The claim was made in a form of action called "case," which denoted an undertaking, and it alleged that the defendant had a duty to make the cart safe. The claim did not, though, allege that the defendant knew that the cart was unsafe. At trial, the plaintiff gave evidence that the defendant knew of the danger, and recovered damages. The defendant made a motion that we can consider as an appeal, and succeeded: the claim was dismissed because it did not include the allegation of knowledge. Some of Lord Abinger's reasons may have been, therefore, unnecessary, but they have become influential and famous - or infamous - nonetheless.

In Re The Board of Commerce Act and the Combines and Fair Prices Act of 1919
[1920] 60 S.C.R. 456

ANGLIN J.—In this case I am to deliver the judgment of my Lord, the Chief Justice, Mr. Justice Mignault and myself.

* * *

Sec. 18 of the Combines and Fair Prices Act purports in explicit terms to confer the authority to make such a restraining or prohibitive order, and s. 38 of the Board of Commerce Act likewise purports in explicit terms to enable the Board to require that any order made by it shall be made a rule, order or decree of the Exchequer Court or of any superior court of any province of Canada. The questions presented are, therefore, in reality whether these particular provisions are within the legislative jurisdiction of Parliament. They may be more conveniently considered separately.

Upon the policy, efficacy or desirability of such legislation it should be unnecessary to state that an opinion is neither sought nor expressed.

Could Parliament empower the Board to make the order?

Counsel representing the Attorney General maintains that it could by virtue of its legislative jurisdiction (a) over "The Criminal Law," (b) in regard to "The Regulation of Trade and Commerce," and (c) "To make Laws for the Peace, Order and Good Government of Canada" (B.N.A. Act, s. 91).

Sec. 17 of the Combines and Fair Prices Act prohibiting the unreasonable accumulation or withholding of "necessaries of life" defined by s. 18 (recently construed by this court in the case of Price Bros. Limited), and requiring that any excess of necessaries of life and all stocks in trade of such necessaries shall be offered for sale at reasonable and fair prices, and s. 22, which imposes penalties, *inter alia*, for contraventions of s. 17, may, I think, be held valid (the latter *pro tanto*) as criminal legislation. The provision of s. 18 authorizing the Board to make the inquiries therein provided for and to determine what shall constitute

unfair profits may possibly be supported as ancillary criminal legislation, as well as for the purposes of s. 24.

But I think it is not possible to support, as necessarily incidental to the efficient exercise of plenary legislative jurisdiction over "the criminal law," the further provision of s. 18 purporting to empower the court to restrain prospective breaches of the statute, the making or taking of unfair profits, and practices calculated unfairly to enhance costs or prices, or the provisions of s. 38 of the Board of Commerce Act for making decisions or orders of the Board rules or decrees of the Exchequer Court or of any provincial superior court. The exception at the end of s. 91 of the B.N.A. Act, although applicable to all the enumerated heads of s. 92,

> was not meant to derogate from the legislative authority given to provincial legislatures by these sixteen subsections, save to the extent of enabling the Parliament of Canada to deal with matters local and private in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumcrative heads of s. 91.

Attorney General for Ontario v. *Attorney General for Canada* (1), at page 360; *Montreal* v. *Montreal Street Rly. Co.* (2).

In so far as the provisions of s. 18 immediately under consideration may involve an invasion of the field of property and civil rights assigned to provincial legislative jurisdiction by s. 92 (12), in my opinion they cannot be supported under s. 91 (27).

The jurisdiction of Parliament over "The Regulation of Trade and Commerce" (s. 91 (2)) has frequently been invoked—usually without success—either in supporting federal legislation alleged to invade the provincial field or in attacking the validity of provincial legislation claimed to fall under one of the enumerated heads of s. 92.

The regulation of the quantities of "necessaries of life" that may be accumulated and withheld from sale and the compelling of the sale and disposition of them at reasonable prices throughout Canada is regulation of trade and commerce using those words in an ordinary sense. While the making of contracts for the sale and purchase of commodities is primarily purely a matter of "property and civil rights," and legislation restricting or controlling it must necessarily

affect matters ordinarily subject to provincial legislative jurisdiction, the regulation of prices of necessaries of life—and to that the legislation under consideration is restricted—may under certain circumstances well be a matter of national concern and importance—may well affect the body politic of the entire Dominion. Moreover, "necessaries of life" may be produced in one province and sold in another. In the case of manufactured goods the raw material may be grown in or obtained from one province, may be manufactured in a second province and may be sold in several other provinces.

Effective control and regulation of prices so as to meet and overcome in any one province what is generally recognized to be an evil—"profiteering"—an evil so prevalent and so insidious that in the opinion of many persons it threatens to-day the moral and social well-being of the Dominion—may thus necessitate investigation, inquiry and control in other provinces. It may be necessary to deal with the prices and the profits of the growers or other producers of raw material, the manufacturers, the middlemen and the retailers. No one provincial legislature could legislate so as to cope effectively with such a matter and concurrent legislation of all the provinces interested is fraught with so many difficulties in its enactment and in its administration and enforcement that to deal with the situation at all adequately by that means is, in my opinion, quite impracticable.

Viewed in this light it would seem that the impugned statutory provisions may be supported, without bringing them under any of the enumerative heads of s. 91, as laws made for the peace, order and good government of Canada in relation to matters not coming within any of the classes of subjects assigned exclusively to the legislatures of the provinces, since, in so far as they deal with property and civil rights, they do so in an aspect which is not "from a provincial point of view local or private" and therefore not exclusively under provincial control.

The carrying out of the Act now in question, as I have endeavoured to point out, will, in some of its phases, affect the inter-provincial trade and the foreign trade of Canada. It has to do with the general regulation of trade in necessaries of life throughout

the Dominion. It would therefore seem to fall within the jurisdiction conferred by Head No. 2 as indicated in *Citizens Ins. Co.* v. *Parsons* (1), at pages 112-113.

No objection can successfully be founded upon the fact that the Board must exercise its powers from time to time in a particular province. *Colonial Building Association* v. *Attorney General of Quebec* (2). The necessity of such local action and regulation is perhaps the chief justification for the delegation to a Board or Commission of the power to define what shall be unfair profits and unreasonable and unjust prices. The unfairness of profits and the unreasonableness and injustice of prices, depends so largely on local conditions which vary from day to day and from place to place that Parliament could not itself deal with them by general legislation. Effective regulation of such matters can be accomplished only by some body such as the Board of Commerce endowed with the powers bestowed upon it and ready from time to time to deal promptly with the problems involved as they arise. Yet the power of Parliament to delegate its functions to the limited extent for which the Combines and Fair Prices Act provides has been challenged. We had occasion comparatively recently to consider and overrule a similar objection in *Re Gray* (1), at pp. 170, 175. Dealing with the power of a provincial legislature to confer on bodies of its own creation authority to make by-laws and regulations upon specific subjects and with the object of carrying an enactment of the legislature into effect, their Lordships of the Privy Council said in *Hodge* v. *The Queen* (2), at page 132:

> It is obvious that such an authority is ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail. The very full and very elaborate judgment of the Court of Appeal contains abundance of precedents for this legislation entrusting a limited discretionary authority to others, and has many illustrations of its necessity and convenience. It was argued at the bar that a legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into its own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for courts of law to decide.

The Acts now under consideration involve no such abdication of legislative jurisdiction—no such abrogation of the power of one of the integral constituents of the legislature as was attempted in recent Manitoba

legislation held *ultra vires* by the Judicial Committee in *Re the Initiative and Referendum Act* (1), where such a limited delegation of legislative functions as was sanctioned in the *Hodge Case* (2) again received their Lordships' approval.

However formidable may be the obstacles to the creation of a Dominion court of criminal jurisdiction presented by clause 27 of section 91 and clause 14 of section 92, of the B.N.A. Act, I see no valid objection to the constitution by our Parliament under s. 101 of a court to carry out the provisions of the Acts now before us designed for the regulation of trade and commerce; and the power to make an order such as that now under consideration, eliminating from it clauses (a) and (b) of the paragraph numbered 1, which are not supported, seems a reasonable and necessary jurisdiction to vest in such a body, in order that its administration may be effective. At all events, if Parliament is endowed with legislative jurisdiction to deal with the subject of profiteering under the head of "the regulation of trade and commerce" as a matter not substantially of local or provincial interest but affecting the well being, social, moral and economic, of the Dominion at large, there appears to be no tenable objection to its jurisdiction to confer on a court of its own creation power to restrain and prohibit contraventions of such regulations and restrictions, general or particular, within the purview of the statute, as it may be found necessary or proper to impose.

DUFF J.—The scope of the authority arising under sec. 91-(2) of the B.N.A. Act has been much discussed. No precise definition of that authority has of course been given or even attempted; nevertheless, it has for 40 years been a settled doctrine that the words "regulation of trade and commerce" as they appear in that item cannot be read in the sense which would be ordinarily ascribed to them if they appeared alone and unaffected by a qualifying context.

Coming to the consideration of the Combines and Fair Prices Act, and particularly section 18 of that Act under which the order in dispute has been made. The jurisdiction of the Board under this section falls broadly into two sub-divisions, first the jurisdiction to make orders prohibiting the accumulation of articles to which the statute applies or the withholding

from sale at reasonable prices of any such articles in excess of the amount reasonably required for domestic purposes, or for the ordinary purposes of business, and secondly the jurisdiction to regulate profits; that is to say to declare what constitutes an unfair profit upon the holding or disposition of such articles, to prohibit the making or taking of such profits and to prohibit any practice which in the opinion of the Board has a tendency to enhance the cost of such articles, or the profits rising from the holding or the disposition of them, or the price of them.

As regards the first head of jurisdiction, the authority of the Board extends to traders and non-traders alike, to persons accumulating by means of purchase or by means of production, to articles accumulated whether by means of production or otherwise, for domestic use or for use for the ordinary purposes of business. For example it applies to accumulations by the house-holder of articles of food produced by the house-holder himself, the small farmer's pork and butter, as well as to his cordwood. It applies to the stock of coal accumulated by a railway or shipping company, or of coal or coke by a gas company or a smelting company, as well as to the coal accumulated by a coal mining company or the gas produced by a gas company; to the dairyman's as well as to the rancher's herd.

In so far as the Act authorizes the Board of Commerce to compel persons who are not engaged in trade to dispose of their property subject to conditions fixed by the Board and persons who are traders to dispose of property in respect of which they are not engaged in trade, (the coal of the railway company or of the gas company, the dairyman's herd for example), I have not a little difficulty in classifying it as an enactment relating to the matters comprised within section 91-(2), upon any fair construction of the words "regulation of Trade and Commerce." It is legislation effecting trade and commerce no doubt, but I am unable to distinguish such an enactment from an enactment authorizing a Board established by Parliament to take over such property on terms to be fixed by the Board and to dispose of it itself. Such compulsory enactments seem to be enactments on the subject

of the rights of property, 92-(13) and "local undertakings," 92-(10) rather than enactments in regulation of trade and commerce.

Turning now to the authority vested in the Board by section 18, in relation to profits and prices. The provisions of section 18 on this subject appear to be obnoxious to the principles laid down in the passages referred to in *Parson's Case* (1), *the Montreal Street Railway Case* (2), and the *Wharton Case* (3). The authority given to the Board is an authority to prohibit the making or taking of unfair profits upon the holding or disposition of any articles to which the statute applies, and the section provides,

> that an unfair profit shall be deemed to have been made, when the Board shall declare an unfair profit to be made.

It is thus left to the Board to make orders affecting individual holders or traders, to fix the terms upon which they are required to dispose of articles withheld from disposition or held for disposition, and such terms the Board is not required to fix by any general regulation, but may, and in the normal course would, fix them with reference to the circumstances of a particular case. The fixing of the terms of disposition by reference to the prohibition against unfair profits might well result in great disparity between the prices charged for the same article by different traders. The creation of an authority endowed with such powers of fixing the terms of contracts in relation to specific articles appears to involve an interpretation of the words, "regulation of trade and commerce," much more comprehensive than anything contemplated by the decisions and judgments referred to above. I have indicated the principle which in my opinion is deducible from *Parson's Case* (1), namely that section 91-(2) does not authorize an enactment by the Dominion Parliament regulating in each of the provinces the terms of the contracts of a particular business or trade, for the reason (put very broadly) that such legislation involves an interposition in the transactions of individuals in the provinces, within the sphere of

> property and civil rights and local undertakings

not contemplated by section 91-(2). Legislation, for example, imposing upon the trade in ready-made clothing throughout Canada, the prohibitions put into

force by the order out of which this reference arises would, if my view of the effect of *Parson's Case* (1) be the right view, pass beyond the scope of the authority given in 91-(2); an enactment, that is to say, by the Dominion Parliament in the precise words of the order now in question could not be supported under that head. I cannot discover any principle consistent with these conclusions, upon which an enactment delegating to a commission the authority to regulate the terms of particular contracts of individual traders in a specified commodity according to the views of the Board as to what may be fair between the individual trader and the public in each transaction, can be sustained as an exercise of that power; and if such legislation could not be supported when the subject dealt with is a single commodity, or the trade in a single commodity, or a single group of commodities, how can jurisdiction be acquired so to legislate by extending the scope of the legislation and bringing a large number of specified trades or commodities within its sweep? Every consideration which can be invoked in support of the view that the authority to regulate by general regulations of uniform application the contracts of a trade in one commodity, does not fall within section 91-(2), can properly be brought to bear with I think increased force in impeaching legislation of the character now in question.

The second question is whether section 18 can be sustained as an exercise of the power of the Dominion under the introductory clause of section 91 to

make laws for the peace, order and good government of Canada.

Two conditions govern the legitimate exercise of this power. First—it is essential that the matter dealt with shall be one of unquestioned Canadian interest and importance as distinguished from matters merely local in one of the provinces; and, secondly, that the legislation shall not trench upon the authority of the province in respect of the matters enumerated in section 92. *Attorney General of Ontario* v. *Attorney General for Canada* (1), *Montreal* v. *Montreal Street Ry. Co.* (2), at pages 343 and 344; *Wharton's Case* (3), at page 337. I have already pointed out that section 18 does profess to deal with matters which in each province are, from the provincial standpoint, rights of property and civil rights there and matters which, in each province, are comprehended within the subject matter "local undertakings."

Nor do I think it matters in the least that the legislation is enacted with the view of providing a remedy uniformly applicable to the whole of Canada in relation to a situation of general importance to the Dominion. The ultimate social economic or political aims of the legislator cannot I think determine the category into which the matters dealt with fall in order to determine the question whether the jurisdiction to enact it is given by sec. 91 or sec. 92. The immediate operation and effect of the legislation, or the effect the legislation is calculated immediately to produce must alone, I think, be considered. I repeat that if, tested by reference to such operation and effect, the legislation does deal with matters which from a provincial point of view are within any of the first fifteen heads of section 92, it is incompetent to the Dominion unless it can be supported as ancillary to legislation under one of the enumerated heads of section 91.

In Re Price Bros. and Company and the Board of Commerce of Canada
[1920] 60 S.C.R. 265

DUFF J.—A careful review of all the considerations presented on the argument has only confirmed my opinion that the fourth paragraph of the order impeached on the appeal cannot be sustained as emanating from any authority given by the "War Measures Act, 1914."

In this connection the sole point requiring examination is that which arises out of Mr. Biggar's contention in his admirable argument that orders-in-council made by the Governor-General in Council professedly under the authority of section 6 of that Act are not judicially revisable. I think such orders are reviewable, in this sense that when in a proper proceeding the validity of them is called into question, it is the duty of a court of justice to consider and decide whether the conditions of jurisdiction are fulfilled and if they are not begin fulfilled, to pronounce the sentence of the law upon the illegal order.

One of the conditions of jurisdiction is, in my judgment, that the Governor-in-Council shall decide that the particular measure in question is necessary or advisable for reasons which have some relation to the perils actual or possible of real or apprehended war—(I leave the case of insurrection out of view as having no relevancy) or as having some relation to the procution of the war or the objects of it.

The recitals of the order of the 20th December are I think in themselves sufficient to constrain any court to the conclusion that the order of the 29th January was not preceded or accompanied by any such decision.

As to the first and second paragraphs of the order of the Board of Commerce, I adhere without any doubt whatever to the opinion expressed in the course of the argument that the classes of articles which the Board is authorized to bring by regulation within the category "necessaries of life" do not comprehend articles which are not necessarily by reason of their value required for some purposes connected with the physical life of the individual.

ANGLIN J.—Price Bros. & Co., Limited, appeal from an order of the Board of Commerce, dated the 6th of February, 1920, by leave of a judge of this court granted under s. 41 (2) of "The Board of Commerce Act," 9 & 10 Geo. V., c. 37. The order purports to have been made by the Board in the exercise of jurisdiction conferred on it by "The Board of Commerce Act" and "The Combines and Fair Prices Act." (9 & 10 Geo. V., c. 45) and also of jurisdiction formerly exercised by Mr. R. A. Pringle, K.C., as Paper Controller, which His Excellency the Governor-in-Council purported to vest, in a modified and extended form, in the Board of Commerce by order-in-council dated the 29th of January, 1920.

While several questions are formulated in the petition on which leave to appeal was obtained, they all seem to resolve themselves into one—the power of the Board to make the impugned order. Three clauses of it—Nos. 1, 2 and 4—are especially challenged. Clause No. 1 prohibits the appellant from taking any price exceeding $80 per ton for newsprint, declaring that any price in excess of that sum "shall be deemed to include unfair profit." Clause No. 2 forbids the appellant accumulating and withholding from sale any quantity of newsprint beyond an amount reasonably required for the ordinary purposes of its business. These two clauses are upheld by counsel representing the Attorney General of Canada on the ground that newsprint was rightly declared by the Board to be "a necessary of life" within s. 16 of "The Combines and Fair Prices Act", and that as such the Board was empowered to deal with it as it did in those clauses.

The argument covered a wide field, the constitutionality of both statutes involved being challenged and various questions discussed as to the construction and sufficiency of the findings of fact in the order. In the view I take of the matter, however, it seems necessary only to consider on this branch of the case whether the finding or declaration that newsprint is a necessary of life within s. 16 of "The Combines and Fair Prices Act" can be upheld. If it cannot, the jurisdiction of the Board to make clauses 1 and 2 of its order cannot be maintained under that Act and "The Board of Commerce Act;" so far as they may be supported under any powers vested in the Board as Paper Controller they may be more conveniently considered with clause 4, which, it is common ground, can be supported only under the latter powers.

By sec. 5 of the "War Measures Act, 1914," it is enacted that war (by which, I take it, is meant the "real war" during which, only, under sec. 3, s. 6 is in force) declared to have existed since the 4th day of August, 1914,

> shall be deemed to exist until the Governor-in-Council by proclamation published in the *Canada Gazette* declares that it no longer exists.

It is common ground that such a proclamation has not yet been made or published. Therefore "real war" is still existing for the purposes of s. 3; and s. 6 is consequently still in force.

Now s. 6 empowers the Governor-in-Council to make such orders and regulations

> as he may by reason of the existence of real or apprehended war, invasion or insurrection, deem necessary or advisable for the security, defence, peace, order and welfare of Canada;

Passing over as not material several intervening orders-in-council—one of the 7th of July, 1919, one of the 1st of December, 1919, one of the 15th December, 1919, and two of the 5th of January, 1920, providing means for making orders of the Paper Controller effective, one of the 30th of December, 1919, approving orders of the Controller fixing prices on newsprint from the 1st of January to the 1st of July, 1920, two of the 22nd of January, 1920, accepting Mr. Pringle's resignation and appointing Mr. R. W. Breadner in his stead and one of the 29th of January accepting Mr. Breadner's resignation, we come to the vitally important order-in-council—that of the 29th of January, 1920, appointing the Board of Commerce as Paper Controller with extended powers and jurisdiction. The approval of the Governor-in-Council, theretofore required before orders of the Paper Controller became effective, was thereby dispensed with, and the appeal to the Paper Controller Tribunal, established under order-in-council of the 16th of September, 1918, was abolished. In lieu thereof the orders and acts of the Board as Paper Controller were made subject to appeal only as provided by "The Board of Commerce Act," under which the present appeal is brought. In adition to

> all powers, jurisdiction, authorities and duties * * * heretofore exercisable by the Commissioner and Controller of Paper,

the Board was expressly vested with

> jurisdiction, power and authority to direct, require and compel shipment by manufacturers of newsprint paper of such quantities of newsprint paper as, in the opinion of the Board, are necessary and can be provided from any paper mill or persons, place or places in Canada.

I shall assume that the terms of this order-in-council, if valid, are wide enough to clothe the Board with power to make its order of the 6th of February, now appealed from. To support that order, so far as it depends on the Board's jurisdiction as Paper Controller, it is essential that the order-in-council now under consideration should be maintained. In so far as it provides for the appointment of the Board as Paper Controller and purports to confer on it powers necessary to carry to completion matters begun by the Paper Controller before the 7th of July, 1919, (when c. 63 of the statutes of that year was assented to) its validity may be assumed. But the Board's order of the 6th of February is not restricted to such matters. On the contrary it deals with distinctly new matters—matters not theretofore begun—the fixing of the price of newsprint and its accumulation by Price Bros. from the date of the order until the 15th of March and the supply of that commodity by Price Bros. in fixed quantities and at fixed prices to certain consumers for future periods. Can the validity of an order-in-council passed on the 20th of January, 1920, under the "War Measures Act, 1914," conferring power to make such an order be maintained? . . .

It is true that, while many orders-in-council passed under the "War Measures Act, 1914," were repealed by the order-in-council containing these recitals, the orders-in-council respecting "Pulp and Paper Control" were directed to remain in force, as were those respecting some eight other subjects; but this may have been—probably was— because, as in the case of "Internment Operations" for instance, it was necessary to carry to completion and wind up work and undertakings begun during the war and still unfinished.

In view of the foregoing facts, however, in my opinion it cannot be suggested, without imputing bad faith to the Governor-in-Council, that in making the order-in-council of the 29th of January, 1920, he professed to do something which he

> deemed necessary or advisable for the * * * security, defence, peace, order and welfare of Canada by reason of the existence of real or apprehended war, invasion or insurrection.

On the other branch of the case I am of the opinion that the Board erred in declaring newsprint to be a "necessary of life" under s. 16 of "The Combines and Fair Prices Act" and that it therefore exceeded its

jurisdiction as administrator of that Act in making the order appealed from. Sec. 16 is as follows:—

> 16. For the purposes of this part of this Act the expression "Necessary of life" means a staple and ordinary article of food (whether fresh, preserved, canned or otherwise treated), clothing and (*sic*) fuel, including the products, materials and ingredients from or of which any part thereof are in whole or in part manufactured, composed, derived or made, and such other articles of any description as the Board may from time to time by special regulation prescribe.

The following three rules of construction are so well known that it seems almost pedantic to re-state them; but their co-ordination and relations *inter se* are perhaps not always equally well understood.

Lord Wensleydale's golden rule, that the grammatical and ordinary sense of words is to be adhered to unless that would lead to some absurdity, repugnance or inconsistency so great as to convince the court that the intention could not have been to use them in that ordinary signification, applies to general words, as to other words. *Generalia verba sunt generaliter intelligenda*, 3 Inst. c. 21, p. 76; *Attorney General* v. *Mercer* (1).

On the other hand general words must be restricted to the fitness of the subject matter (Bacon's Maxims, No. 10) and to the actual apparent objects of the Act (*River Wear Commissioners* v. *Adamson* (1), following the intent of the Legislature to be "gathered from the necessity of the matter and according to that which is consonant to reason and good discretion." *Stradling* v. *Morgan* (2); *Cox* v. *Hakes* (3).

Where general words are found, especially in a statute, following an enumeration of persons or things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof, their construction should be restricted to things of that class or category (*Reg.* v. *Edmunston* (4), unless it is reasonably clear from the context or the general scope and purview of the Act that Parliament intended that they should be given a broader signification.

Recent applications of the rule last stated, and usually known as the *ejusdem generis* rule, are to be found in the judgments in the House of Lords in *Stott (Baltic) Steamers, Ltd.*, v. *Marten* (5), and the judgment of Sankey J. in *Attorney General* v. *Brown* (6).

At first blush the words "of any description" appended to the general words "other articles" would almost seem to have been inserted to indicate an intention to exclude the application to this section of the

ejusdem generis rule, and to require that the general words "other articles" should here be given their ordinary general construction. Yet, although no authority has been cited where that rule has been applied notwithstanding the addition of the words "of any description" to such general words as "other articles," it has frequently been acted on where the equally comprehensive word "whatsoever" (see Stroud's Judicial Dictionary, 2 ed., p. 223) has been appended to similar general words, such as "other persons."

In the present case far from indicating that an application of the restrictive rule would probably defeat the object of the statute or that there is good reason for believing that the legislature intended the general words it has used to bear a more extended meaning than if restricted to things similar in kind to those by the enumeration of which they are preceded, consideration of the character of the Act and of the context as a whole rather leads to the contrary view—that Parliament cannot have meant that words the "other articles" should bear their ordinary broad signification. In the first place, if they did, the enumeration of articles of food, clothing and fuel was quite unnecessary and the restriction to articles "staple and ordinary," the careful particularization of

the products, materials and ingredients from or of which any thereof are in whole or in part manufactured, composed, derived or made

and the specification, in the case of food,

whether fresh preserved, canned or otherwise treated,

serve no purpose. If the words "other articles of any description" mean "anything whatsoever," the section may be paraphrased thus: "Necessary of life" means any article of any description which the Board of Commerce may from time to time by special regulation declare to be such. Can it be that that is what Parliament intended? *Re Stockport Ragged, Industrial and Reformatory Schools* (1).

Moreover, if s. 17, taken with s. 28, should be regarded as an enactment in the nature of criminal law—as counsel representing the Attorney General contended, and I incline to think rightly—the Board would thus be enabled by its mere declaration to render criminal the accumulation or withholding from sale, to the extent stated in s. 17, of any article whatever, however little likely to be regarded as a necessary of life as that term is ordinarily understood. It is to me inconceivable that Parliament meant to confer

such wide and unheard of powers. I rather think that no one would be more surprised and shocked than the legislators themselves were they informed that they had done so. I am therefore satisfied that Parliament must have intended that the words "other articles of any description" in sec. 16, notwithstanding their obvious and emphasized generality, should receive a much more restricted construction; and no other restriction that can be put upon them occurs to me which has so much to commend it, as being probably that which Parliament had in mind, as that embodied in the well-known maxim *noscuntur a sociis*. Parliament was dealing with articles of food, clothing and fuel. It had these present to its mind. It must be taken to have been fully cognizant of the legal maxim just quoted and of its embodiment in the *ejusdem generis* rule of construction so frequently acted on by the courts. What more natural than that it should have meant "other articles" to comprise only things which like food, clothing and fuel are requisite to maintain the physical health and vitality of the human body? Medicines have been suggested as falling within such a category; and there are, no doubt, some few other things essential to the life, health and sustenance of the body which are not strictly articles of food, clothing or fuel for which Parliament thought it well to provide. I cannot conceive of any genus or category that would include newsprint with articles of food, clothing and fuel. Nor, in my opinion, had there been no definition whatever of the term "necessary of life," would the Board have been justified in treating newsprint as such.